

estimated duties." 19 U.S.C. § 1675(a)(2)(C) (emphasis added). Although the statute thus requires that the results of a review apply to *both* cash deposits of prospective estimated duties as well as the assessment of retrospective actual duties, Commerce does not apply review results equally. While Commerce admits that review results do apply to *cash deposits*, Commerce does not accord review results to actual duties. At the time of review at issue in this case, Commerce assessed retrospective actual duties on importers of resold products on the basis of the producer's cash deposit rate. Currently, Commerce assesses retrospective actual duties on such importers on the basis of the initial "all others" cash deposit rate.

Thus, Commerce's interpretation of the statute (both under the assessment policy applied in this case and under the policy currently applied today) is flatly inconsistent with the text of the statute, which requires that review results apply equally to *both* deposits and actual duties. Although the government tries to dodge this fatal inconsistency by arguing that the new policy is not at issue in this case, *see* U.S. Opp. Mem (Renesas) at 4, the former policy is at issue in this case, and the new policy contains the same defect as the former policy. The former and the existing policy both reveal Commerce's statutory construction in this case to be untenable.

## CONCLUSION

For the reasons provided above and in the petition for writ of certiorari filed February 2, 2006, this Court should grant Renesas' petition.

Respectfully submitted,

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